

Message Text

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ACTION DLOS-05

INFO OCT-01 ISO-00 ACDA-05 AGR-05 AID-05 CEA-01 CEQ-01

CG-00 CIAE-00 CIEP-01 OFA-01 COME-00 DODE-00 DOTE-00

EB-07 EPA-01 ERDA-05 FMC-01 H-02 INR-07 INT-05 IO-10

JUSE-00 L-02 NSAE-00 NSC-05 NSF-01 OES-03 OMB-01

PA-01 PM-03 PRS-01 SP-02 SS-15 FEA-01 AF-06 ARA-06

EA-06 EUR-12 NEA-09 SSO-00 NSCE-00 INRE-00 USIE-00

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FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 1697

S E C R E T GENEVA 2148

FROM USDEL LOS

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: MILITARY EXCEPTION TO COMPULSORY DISPUTE SETTLEMENT

REF: (A) NSC-U/DM-109B

1. RECOMMENDATION ON PAGE 121 OF REFERENCE (A),
INCLUDING FOOTNOTE, HAS GIVEN RISE TO QUESTION
IN RESPECT OF COMPULSORY SETTLEMENT OF THOSE
DISPUTES INVOLVING THE USE OF VESSELS AND AIR-
CRAFT ENTITLED TO SOVEREIGN IMMUNITY IN ENFORCE-
MENT ACTIVITIES, E.G., POLLUTION AND FISHERIES.

2. RESULT OF LITERAL READING OF BROAD LANGUAGE
OF PAGA 121 OF REFERENCE (A), UNINTENDED BY
DRAFTERS, WOULD BE INCONSISTENT WITH US OBJECTIVE,

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IN INSTRUCTIONS REFERENCE (A), OF COMPULSORY

DISPUTE SETTLEMENT WITH RESPECT TO ECONOMIC ZONE AND COASTAL STATE ENFORCEMENT RIGHTS, INCLUDING ANY POLLUTION ENFORCEMENT RIGHTS, SINCE SUCH ENFORCEMENT ACTIVITIES COULD BE VIEWED AS COMING WITHIN EXCEPTION FOR QUOTE MILITARY ACTIVITIES UNQUOTE OR, MORE SO, QUOTE WARSHIPS OR OTHER PUBLIC VESSELS OR AIRCRAFT ENTITLED TO SOVEREIGN IMMUNITY UNQUOTE AND WOULD THUS NOT BE SUBJECT TO COMPULSORY DISPUTE SETTLEMENT. OUR VERY ABILITY TO REACH AN ACCOMMODATION ON COASTAL STATE RIGHTS THAT PROTECTS OUR COMMERCIAL SHIPS BASED ON THE NEED FOR DISPUTE SETTLEMENT PROTECTION AGAINST UNILATERAL AND UNREASONABLY BROAD COASTAL STATE INTERPRETATION OF ITS REGULATORY AND ENFORCEMENT RIGHTS.

3. UNLESS ADVISED TO THE CONTRARY BY THE DEPARTMENT, DELEGATION WILL INTERPRET REFERENCE (A) AS NOT REPEAT NOT DIRECTING EXTENSION OF MILITARY EXCEPTION TO INCLUDE DISPUTES ABOUT EXERCISE OF JURISDICTION TO ENFORCE COASTAL STATE RIGHTS MERELY ON THE GROUND THAT A VESSEL OR AIRCRAFT ENTITLED TO SOVEREIGN IMMUNITY WAS INVOLVED IN AN ARREST OF A MERCHANT SHIP OR SIMILAR LAW ENFORCEMENT ACTITITES ASSOCIATED WITH THE DISPUTE. E.G., COMPULSORY DISPUTE SETTLEMENT WOULD APPLY TO AN INCIDENT PRECIPITATED BY AN ARREST OF A MERCHANT VESSEL BY A VESSEL OR AIRCRAFT ENTITLED TO SOVEREIGN IMMUNITY. HOWEVER, AN INCIDENT BETWEEN A FOREIGN MILITARY VESSEL AND A COASTAL STATE MILITARY VESSEL RESULTING FROM AN ATTEMPTED ARREST OF A MERCHANT SHIP OF THE FOREIGN STATE WOULD BE CONSTRUED TO BE QUOTE MILITARY ACTIVITIES UNQUOTE AND NOT SUBJECT TO COMPULSORY DISPUTE SETTLEMENT. DALE

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